

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

MFA.No. 1377 of 2000()

OPMV.1874/1990 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM
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APPELLANT:

A.SHAJAHAN, POIKAVILA VEEDU,
MUTHANA, CHEMMARUTHY VILLAGE,
PALAYAMKUNNU VIA.,
VARKALA.

BY ADV. SRI.N.VIMALAN
SRI.BIJU M.JOHN

RESPONDENTS:

1. THE MANAGING DIRECTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
THIRUVANANTHAPURAM.

*2. (P.E.ABDU, S/O. IBRAHIM,
PADINJAREKALATHIL VEEDU,
KARIVELIPADY, COCHIN.) **DELETED**

(*THE NAME AND ADDRESS OF THE 2ND RESPONDENT IS DELETED FROM THE
APPEAL, AT THE RISK OF THE APPELLANT – VIDE ORDER DATED 20/07/2007 ON
I.A.NO. 1454/07.)

ADDL.3. ABDUL HAKKIM, S/O. SAYED MOHAMMED,
SULEKHA MANZIL, MUTHANA.P.O.,
VARKALA.

ADDL.4. UNITED INDIA INSURANCE CO. LTD.,
ATTINGAL.

BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC
SRI.MATHEWS JACOB
SRI.K.PRABHAKARAN, SC, K.S.R.T.C.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 01/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A. No. 1377 of 2000

Dated, this the 1st day of October, 2007

J U D G M E N T

The petitioner in O.P. (MV) No. 1874/1990, on the file of the Motor Accidents Claims Tribunal, Kollam, is the appellant herein. The appeal is filed against the award passed by the Motor Accidents Claims Tribunal dismissing the original petition filed by the appellant claiming compensation. The appellant filed the petition claiming compensation alleging that on 06/09/1990, he was driving the car bearing Reg. No. KET 6283 through the National Highway with two passengers in the car. It is averred that when the car reached at Vavvakkavu Junction, a stage carriage bus bearing Reg. No. KLX 4275, owned by the 1st respondent KSRTC, which was driven by the 2nd respondent, came in a rash or negligent manner and hit against the car driven by the appellant. It is averred that the petitioner as well as the passengers traveling in the car sustained injuries. According to the appellant, the accident occurred due to the negligence of the driver of the KSRTC bus. In the petition, the appellant had impleaded the owner of the car as well as the insurer of the same. The Tribunal found that the accident occurred due to

the negligence of the appellant himself and hence, he is not entitled to compensation under Section 166 of the Motor Vehicles Act. It was further found that the principles under Section 140 of the Motor Vehicles Act also cannot be invoked, as there was no permanent disability which will come within the definition of Section 142 of the Motor Vehicles Act. Challenging that award, this appeal is filed. Learned counsel appearing for the appellant had stated in the petition itself that in addition to the appellant, two passengers, who were traveling in the car, were also sustained injuries. It is averred that one of the passengers, filed O.P. (MV) No. 430/91. The other passenger also filed another Original Petition. It is argued that in those two original petitions, the owners, drivers and the insurers of the car and the bus were impleaded as respondents. It is averred that, in both those original petitions, the Tribunal found that the accident occurred due to the negligence of the appellant as well as the driver of the KSRTC bus and both of them are equally responsible and the responsibility was fixed at 50:50. It is argued that, that fact was pointed out before the Tribunal but that was not considered. After hearing both sides, I am of the view that it is only just and proper in the view of the decision rendered in

OP(MV) No. 430/91, one more opportunity is to be given to the appellant to adduce evidence. For that purpose this case has to be go back.

2. In the result, this MFA is allowed. The impugned award is set aside. The case is remanded to the Tribunal for fresh disposal in accordance with law. The Tribunal is directed to take OP(MV) No. 1874/90 back to file and dispose of the same afresh in accordance with law after giving an opportunity to both sides to adduce further evidence, if so advised. Being an old case, the Tribunal shall make all endeavors to dispose of the case within six months from the date of their appearance.

The parties shall appear before the Court below on 05/11/2007.

(K.PADMANABHAN NAIR, JUDGE.)